

# HOUSE BILL 1109

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By: **Delegate Vaughn**

Introduced and read first time: February 11, 2011

Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2011

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Real Property – Rescission of Sales Contracts – Return of Deposits**

3 FOR the purpose of requiring the return of a deposit held by a real estate broker to a  
4 purchaser who rescinds a contract to purchase a residential dwelling, a  
5 cooperative interest, a condominium unit, or a lot in a homeowners association  
6 to comply with a certain law governing the maintenance and disposition of trust  
7 money by a real estate broker under certain circumstances; making ~~clarifying~~  
8 conforming changes; and generally relating to the return of a deposit on  
9 rescission of a real property sales contract.

10 BY repealing and reenacting, without amendments,  
11 Article – Business Occupations and Professions  
12 Section 17–505  
13 Annotated Code of Maryland  
14 (2010 Replacement Volume)

15 BY repealing and reenacting, without amendments,  
16 Article – Corporations and Associations  
17 Section 5–6B–03(a), (b), and (c)  
18 Annotated Code of Maryland  
19 (2007 Replacement Volume and 2010 Supplement)

20 BY adding to  
21 Article – Corporations and Associations  
22 Section 5–6B–03(c–1)

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland  
2 (2007 Replacement Volume and 2010 Supplement)

3 BY repealing and reenacting, with amendments,  
4 Article – Real Property  
5 Section 10–702(h), 11–126(e), and 11–135(f)  
6 Annotated Code of Maryland  
7 (2010 Replacement Volume and 2010 Supplement)

8 BY repealing and reenacting, without amendments,  
9 Article – Real Property  
10 Section 11B–108(a), (b), and (c)  
11 Annotated Code of Maryland  
12 (2010 Replacement Volume and 2010 Supplement)

13 BY adding to  
14 Article – Real Property  
15 Section 11B–108(c–1)  
16 Annotated Code of Maryland  
17 (2010 Replacement Volume and 2010 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Business Occupations and Professions**

21 17–505.

22 (a) A real estate broker shall maintain trust money in an account authorized  
23 under this Part I of this subtitle until:

24 (1) the real estate transaction for which the trust money was  
25 entrusted is consummated or terminated;

26 (2) the real estate broker receives proper written instructions from the  
27 owner and beneficial owner directing withdrawal or other disposition of the trust  
28 money;

29 (3) on an interpleader filed by the real estate broker, a court orders a  
30 different disposition; or

31 (4) the owner or beneficial owner of the trust money fails to complete  
32 the real estate transaction for which the trust money was entrusted and the real  
33 estate broker, in the real estate broker’s sole discretion, decides to distribute the trust  
34 money in accordance with subsection (b) of this section.

1 (b) (1) Prior to distributing the trust money under subsection (a)(4) of this  
2 section, the real estate broker shall notify both the owner and the beneficial owner  
3 that the real estate broker intends to distribute the trust money to the person who, in  
4 the good faith opinion of the real estate broker, is entitled to receive the trust money  
5 in accordance with the terms of the real estate contract which established the trust.

6 (2) The notice required under this subsection shall:

7 (i) be in writing;

8 (ii) state whether the trust money will be paid to the owner or  
9 beneficial owner; and

10 (iii) disclose to the owner and the beneficial owner that:

11 1. either party may prevent distribution of the trust  
12 money under subsection (a)(4) of this section by submitting a protest within 30 days  
13 from the date the notice was delivered or mailed by the real estate broker; and

14 2. if neither party submits a protest within 30 days from  
15 the date the notice was delivered or mailed by the real estate broker, the trust money  
16 will be distributed in accordance with the real estate broker's notice.

17 (3) The notice required under this subsection shall be:

18 (i) hand delivered to both the owner and beneficial owner; or

19 (ii) sent by certified mail, return receipt requested, and regular  
20 mail to both the owner and beneficial owner.

21 (4) (i) An owner or beneficial owner may protest the distribution of  
22 the trust money.

23 (ii) An owner or beneficial owner shall submit the protest to the  
24 real estate broker holding the trust money within 30 days from the date the notice  
25 required in paragraph (1) of this subsection was delivered or mailed by the real estate  
26 broker.

27 (iii) A protest shall be in writing and either:

28 1. hand delivered; or

29 2. sent by certified mail, return receipt requested, and  
30 regular mail.

1           (5)   (i)    If a written protest is received by the real estate broker, the  
2 real estate broker shall distribute the trust money in accordance with subsection  
3 (a)(1), (2), or (3) of this section.

4                   (ii)   If no written protest is received by the real estate broker  
5 holding the trust money, the real estate broker shall distribute the trust money in  
6 accordance with the terms of the notice as required in this section.

7           (c)    When the duty of the real estate broker to maintain trust money in an  
8 account terminates, the real estate broker promptly shall account for all trust money.

9           (d)    A real estate broker may invest trust money:

10                   (1)    as the owner and beneficial owner of the trust money instruct in  
11 writing; or

12                   (2)    as the real estate broker, owner, and beneficial owner of the trust  
13 money agree in writing.

14           (e)    A real estate broker may not be liable to an owner or beneficial owner of  
15 the trust money for:

16                   (1)    a good faith decision to distribute the trust money under  
17 subsection (a)(4) of this section; or

18                   (2)    a decision not to distribute the trust money under subsection (a)(4)  
19 of this section.

20           (f)    An agreement under which a real estate broker is entrusted with the  
21 trust money shall contain a statement that the real estate broker may distribute the  
22 trust money in accordance with subsection (b) of this section if the owner or beneficial  
23 owner of the trust money fails to complete the real estate transaction for which the  
24 trust money was entrusted.

## 25                                   **Article – Corporations and Associations**

26   5–6B–03.

27           (a)    Within 15 days after a contract is signed or a public offering statement is  
28 received, whichever occurs later, the initial purchaser may rescind, in writing, the  
29 contract without any liability on the initial purchaser's part, and shall thereupon be  
30 entitled to the prompt return of the deposit made on account of the contract.

31           (b)    (1)    After a contract is signed and before the issuance of a membership  
32 certificate, the developer must deliver to the initial purchaser a copy of any  
33 amendments, supplements, or modifications to the public offering statement.



1 SHALL COMPLY WITH THE PROCEDURES SET FORTH IN § 17-505 OF THE  
2 BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

3 11-126.

4 ~~(e) (1) Any purchaser may RESCIND IN WRITING THE CONTRACT OF~~  
5 ~~SALE WITHOUT STATING ANY REASON AND WITHOUT ANY LIABILITY ON THE~~  
6 ~~PURCHASER'S PART AND SHALL BE ENTITLED TO THE RETURN OF ANY~~  
7 ~~DEPOSITS MADE ON ACCOUNT OF THE CONTRACT at any time;~~

8 ~~[(1) (I) [within] WITHIN 15 days following receipt of all of the~~  
9 ~~information required under subsection (b) of this section or the signing of the contract,~~  
10 ~~whichever is later; and~~

11 ~~[(2) (II) [within] WITHIN 5 days following receipt of the information~~  
12 ~~required under subsection (d) of this section], rescind in writing the contract of sale~~  
13 ~~without stating any reason and without any liability on his part, and he shall be~~  
14 ~~entitled to the return of any deposits made on account of the contract];~~

15 (e) (1) Any purchaser may at any time [(1)(I) within 15 days following  
16 receipt of all of the information required under subsection (b) of this section or the  
17 signing of the contract, whichever is later; and [(2)(II) within 5 days following receipt  
18 of the information required under subsection (d) of this section, rescind in writing the  
19 contract of sale without stating any reason and without any liability on his part, and  
20 he shall be entitled to the return of any deposits made on account of the contract.

21 (2) THE RETURN OF ANY DEPOSITS HELD IN TRUST BY A  
22 LICENSED REAL ESTATE BROKER TO A PURCHASER UNDER THIS SUBSECTION  
23 SHALL COMPLY WITH THE PROCEDURES SET FORTH IN § 17-505 OF THE  
24 BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

25 11-135.

26 (f) (1) Any purchaser may at any time within 7 days following receipt of  
27 all of the information required under subsection (a) or (b) of this section, whichever is  
28 applicable, rescind in writing the contract of sale without stating any reason and  
29 without any liability on his part.

30 (2) The purchaser, upon rescission, is entitled to the return of any  
31 deposits made on account of the contract.

32 (3) IF ANY DEPOSITS ARE HELD IN TRUST BY A LICENSED REAL  
33 ESTATE BROKER, THE RETURN OF THE DEPOSITS TO A PURCHASER UNDER THIS  
34 SUBSECTION SHALL COMPLY WITH THE PROCEDURES SET FORTH IN § 17-505  
35 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

1 11B-108.

2 (a) A person who enters into a contract as a purchaser but who has not  
3 received all of the disclosures required by § 11B-105, § 11B-106, or § 11B-107 of this  
4 title, as applicable, shall, prior to settlement, be entitled to cancel the contract and to  
5 the immediate return of deposits made on account of the contract.

6 (b) (1) Any purchaser who has not received all of the disclosures required  
7 under § 11B-105 or § 11B-106 of this title, as applicable, 5 calendar days or more  
8 before the contract was entered into, within 5 calendar days following receipt by the  
9 purchaser of the disclosures required by § 11B-105(a) and (b) or § 11B-106(a) and (b)  
10 of this title, as applicable, may cancel in writing the contract without stating a reason  
11 and without liability on the part of the purchaser.

12 (2) The purchaser shall be entitled to the return of any deposits made  
13 on account of the contract, except that the vendor shall be entitled to retain the cost of  
14 reproducing the information specified in § 11B-105(b), § 11B-106(b), or § 11B-107(b)  
15 of this title, as applicable, or \$100, whichever amount is less, if the disclosures are not  
16 returned to the vendor at the time the contract is cancelled.

17 (c) Any purchaser may within 3 calendar days following receipt by the  
18 purchaser of a change in mandatory fees and payments exceeding 10 percent of the  
19 amount previously stated to exist or any other substantial and material amendment to  
20 the disclosures required by § 11B-105 or § 11B-106 of this title, as applicable, which  
21 adversely affects the purchaser, cancel in writing the contract without stating a reason  
22 and without liability on the part of the purchaser, and the purchaser shall be entitled  
23 to the return of deposits made on account of the contract.

24 **(C-1) IF ANY DEPOSITS ARE HELD IN TRUST BY A LICENSED REAL ESTATE**  
25 **BROKER, THE RETURN OF THE DEPOSITS TO A PURCHASER UNDER SUBSECTION**  
26 **(A), (B), OR (C) OF THIS SECTION SHALL COMPLY WITH THE PROCEDURES SET**  
27 **FORTH IN § 17-505 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS**  
28 **ARTICLE.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 2011.